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CHAPTER IX

MARRIAGE AND THE SOCIAL STRUCTURE

Mate selection and marriage exchanges as reflections of the social structure—social and psychological aspects of nuptial rites—the handling of the themes of sex and concubinage, of barrenness and premature death in the marriage situation.

From mummeries and masks we turn to marriage and *munyunalo* (bride-price). The secrecy of the *digwa* contrasts strangely with the publicity of marriage ceremonial; but they are both cultural devices for dealing with cultural problems. The hidden forces in nature and man are intractable and can be brought under control only by rephrasing them as mysteries, the fear of which is overcome by man-made initiations and cults. Marriage is also an initiation, but its complicated ceremonial is concerned chiefly with laying the concrete foundations of the social structure. This is a gigantic and delicate task, almost beyond the capacity of the culture. Fortunately, we can see more clearly than in the case of the *digwa* how this task has been accomplished, but unfortunately we shall have space merely to glance at the larger features instead of examining closely the exquisite workmanship and superlative ornamentation.

It is not easy to appreciate the immense implications of marriage among the Lovedu. For one thing, the concomitant cattle exchanges transform it into something wholly unlike the contract between two individuals of different sex among us. The fact that a Lovedu woman may, just like a man, marry a wife, warns us that we are in a world entirely different from our own. The elaborate ceremonial reflects the enormous importance of marriage and of the network of links that are forged by the cattle that pass. The bonds that are created in this manner can be put to all manner of uses. They form the basis of the *munyunalo* ring of exchanges. They hold together the political system, incorporating as they do foreign elements in the tribe, and casting the net of relationship over the whole country. Marriage and *munyunalo* provide the pattern even for dealing with homicide: the murder is not avenged; by handing over cattle or by giving his daughter, the murderer and his relatives become enmeshed in the network of exchanges; he is transformed from criminal to kinsman and a potential blood feud is turned into the reciprocal relations between the people of the bride and those of the groom. A man threatened with starvation when his crops have failed and his cattle have died can, by linking himself to the *munyunalo* ring of another, save both himself and his family.

But the most startling proof of the importance of Lovedu marriage lies therein that the tribunals of the *khoro*—in other words, the organization that corresponds to our legal system—are mainly concerned with marriage and *munyunalo* tangles; the *raison d'être* of the *khoro* and its law appear to be the preservation of the marriage system. The whole genius of *khoro* law and of *khoro* judicial proceedings is the genius of resolving tensions within the gigantic superstructure built upon marriage and its

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581 associated institutions. In these circumstances, it is patently absurd for
182 us to orientate ourselves as if marriage affects only personal relationships
642 between two individuals. To regard marriage as primarily a sexual partnership or even as an institution for promoting the procreation and rearing of children is to misunderstand completely its great role in the social organization.

581 As the main function of marriage is to create and perpetuate alliances
582 between groups of people, sexual or temperamental compatibility between the prospective spouses is not regarded as an ideal. Emphasis on romantic love, and pre-marital sexual experimentation, with a view to testing out compatibility, would be incongruous with the prevailing type of marriage. Mate selection in its ideal form is socially regulated, and the ideal form is the basic pattern of all marriages. The social organization determines whom one shall marry, and the parents, not the individuals concerned, set the machinery of the organization into motion. The ideal marriage is marriage of a man with his mothers' brother's daughter or of a woman with her father's sister's son. This does not mean that all cross-cousins are preferred mates. It is, for instance, considered irregular for a man to marry his father's sister's daughter; that cases of such marriages are found should not surprise us. There are irregularities in every sphere of culture, and the rules of mate selection are particularly liable to be upset because of the complex interrelations that arise in the social system. The fundamental rule is that a man must marry, not the daughter of any brother of his mother, but the daughter of that brother who has used his mother's marriage cattle to obtain a wife for himself. His mother and his mother's brother are cattle-linked sister and brother because, when she married, the cattle that came in were handed to the brother for obtaining a wife: the cattle of the sister *ufe* said to 'build a hut for her brother'. We may thus say that a man must marry a daughter of his cattle-linked maternal uncle, and we may call her his 'cattle-linked cross-cousin'.

But the Lovedu phrase the matter rather differently and more significantly. They say that the sister has 'built the house of her brother' (the cattle-linked brother), that therefore she 'has a gate' by which she may enter his house, this gate being 'the gate which the cattle seek', and that it is her right to demand from the 'house built by her cattle' a daughter who must come to her as her daughter-in-law to stamp and cook for her. Note that the right is not phrased as the right of her son to obtain his wife from that house; note further that the right is in respect of the house—that is, of the wife of the cattle-linked brother, not in respect of the brother. That wife is the *mawoyi* (returner) of the sister, the person who is obliged to return her daughter to the place whence the cattle came; and it does not matter if in the house of the sister there is no son to marry this daughter. The *mawoyi* must send her daughter if requested, and, if cattle are offered, to be the daughter-in-law of her husband's cattle-linked sister, whether that sister has a son or not; for it is the sister's right to be served and helped, especially in her old age, by the daughter of the house which she has established. The ideal is that a girl should not be married to her father's sister's husband or, in

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CHAPTER XI

THE GENIUS OF JURIDICAL ADJUSTMENTS

Conciliation machinery at the capital—quasi-judicial systems of appeasement—reliance in full-dress trials and sanctions upon agreement and compromise—procedure in 'blood' cases—appeals to ordeals and diviners.

692 671 The genius of the Lovedu political system is its network of reciprocities; the genius of the legal system is its procedure of reconciliations and compromises; and both the political and legal systems reflect the main emphases and purposes of the culture. *Khavi* proceedings, the full-dress trials of the Lovedu, stand out conspicuously amid the various judicial arrangements, some of which we may be inclined to call quasi-judicial, but in reality none of our legal terms are appropriate. Their *khavi* is court-like, but it is not a court in our sense of the term; their law is law-like, not the equivalent of our law. All the procedures aim, not at settling legal issues, but at effecting compromises and reconciliations. The *khavi* itself, the most imposing feature of public life and the pinnacle of the cultural edifice, relies, not on force, but on friendly adjustments. It is the courtyard of compromises, not the arena of casuistic contests. It disposes of no sanctions of execution: coercion is incongruous with its purposes. Culture contact has weakened the effectiveness of compromise and thereby has rendered necessary what it denies to the *khavi*—namely, the sanction of force.

692 In this chapter we deal briefly with the organization of the *khavi* and then touch lightly upon certain quasi-judicial processes. These lead us to cast a passing glance first at *khavi* procedure and thereafter at various other types of procedure which centre, not in the *khavi*, but in other arrangements such as those involved in settling 'blood' cases and in dealing with the deeds of darkness by divination and the ordeal. All these procedures are part of the legal machinery, but they can be understood only as part also of the whole social structure. A comprehensive account of them is out of the question; we have no time even for a glimpse at substantive law.

692 693 The queen is at the head of the *khavi* organization. She never sits in the *khavi*, for it is the courtyard of the men. But she is always in the background, and in theory all decisions at the capital should be reported to, and confirmed by her. Five years ago, when the queen's uterine brother still lived and was a councillor, this was no formality, but to-day only very serious cases or decisions are submitted for her verdict or confirmation. This divergence from the ideal is due to conflicts, fear of involving the queen with European authorities, and a growing desire to reserve *khavi* affairs to the men. The queen's approval is still sought, always when the dispute involves the position or status of a royal relative, often when a district head expels a subject, and sometimes when a recalcitrant party is to be sent to the Native Commissioner or when one

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of the parties objects to the decision of the Mare. It is the queen's pre- 682
rogative to settle disputes between royal relatives, but she also privately 683
settles differences which, for reasons of public policy or of the prestige of the parties, should not be publicly discussed, and sometimes, to avoid the hardening of transient differences into permanent hostility, even withdraws cases, especially witchcraft cases, from the jurisdiction of the Mare. The queen has an unshakable reputation for integrity, and acts independently, if she likes, though often she consults trusted advisers, some of whom at present are not her councillors.

The rule of the queen is not unconnected with the institution of 673
'mothers' of districts. 'Mothers' are appointed by the queen or with her approval, and are usually her relatives, living at the capital and having direct access to her. Generally they report in the first instance to the councillors, especially to the son of the queen's mother's brother, who is the greatest councillor. The office of 'mothers', though hereditary, often changes hands because of its responsibilities and inadequate rewards, the opportunities of favourably placed persons and the requirement of residence at or near the capital. Often a widow, familiar with her husband's arrangements, takes over the position, enlisting the help of a relative, who at her death naturally steps into her shoes. Since the fees received cannot meet the needs of taxpayers, usually only old people are 'mothers', but inability to cope with long journeys forces them to entrust some of their work to available sons or relatives, who in turn may succeed to the position. 'Mothers' are often related to, but may be only fortuitously linked with, the heads of districts under their charge. A foreign chief or headman may be introduced at the capital by a friend or relative 687
or stranger, who thereupon becomes his 'mother'. In 1910, when a colony of settlers from Basutoland came, Mashaseli, who had no previous association with them, took the message of their arrival to the queen and henceforth acted as their 'mother'. Independent foreign chiefs also have their 'mothers', who sometimes live far from the capital.

'Mothers' have politico-legal and other functions. They receive their 'children', the district heads or foreign chiefs, and act as intermediaries whenever formal relations with the queen or great councillors are involved. When it is impracticable for a district head to bring beer to the queen, he may send measles, which are deposited at the 'mother's' and there converted into the tributary beer. The arrival of beer from a district is always reported to the 'mother', who receives one calabash. 'Mothers' are the messengers or ambassadors of the queen sent to settle disputes among their 'children' or to represent her, for instance, at the formal installation of a district head. Important links in politics, they are the master links in the legal system. Some 'mothers' supervise the legal interrelations of many districts with the capital. As some districts are far off, eight to ten miles, they may delegate the work, in respect of some districts or of some of its aspects, to others, such as sons, wives, sister's sons, or wife's brothers. Thus Khidima, 'mother' of Maculana, Mazaga, Madumani, Gobisi, Mumgodudzi, and a European-owned farm, sometimes puts cases coming from the first three districts in the hands of his sister's son, but, since Khidima's own son has reached years

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responded to the order to weed the queen's field, *makwala* went to collect a fowl from each 'rebel'. They collected seven fowls, because most of the delinquents could offer excuses which showed, to the satisfaction of the *makwala*, that they had repented. In 1938 Mahubuzana complained that the residents of his district despised him. They had successively ignored his order to make *marula* cider first for himself and then for the queen and also to bring the 'money for the petrol of the queen's car'. *Makwala*, the councillors said, would be sent to exact one goat from every household. Nothing happened. Later Mahubuzana brought the five main culprits to the capital and there they were told to pay 5*s*. each to their district head and to leave the district after having gathered in their harvest. 'You have despised the district head and the queen,' it was said. 'Go, then, and live where there is no chief, for here you worry the queen.' There was no trial; and a year after the 1938 harvest the rebels were still living in the district. *Makwala* are also sent to exact the fine due in those 'blood' cases that are reported to the queen. Despite apparent exceptions, *makwala* are not and never were deputed to execute upon a decision of the *khoro*, for the *khoro* is concerned with private delicts, wrongs between individuals who, in the last resort, are left to arrange restitution among themselves.

At the village of each district head there is also a *khoro*, the arrangements of which resemble those at the capital; but, of course, there are many variations. Its competence is in practice determined by the presumptions of the district head; and the law it applies is not necessarily the law of the capital. Some district heads, having sub-districts under them, attach 'mothers' and *makwala* to the *khoro*, but usually these are only messengers for calling defendants. *Khoro* trials are usually held in the district of the defendant, and the messenger or 'mother' is entitled to the 'fee of the feet', but not all district heads charge for 'opening' the *khoro*. The district head may have a special *duna*, often his elder brother, who is entrusted with legal matters and 'presides' in his absence; women who are heads do not appear in the *khoro*, but confirm decisions. Sometimes the district *khoro* is better organized and controlled than that at the capital, there may be regular judges and assessors, the word is 'passed' (*ku ranga*) from the junior to the senior members, contempt is strictly dealt with, and so on. But this is unusual, the organization being much more haphazard and the procedure much less regularized. Mostly the district head intervenes at the request of one party to see whether he can effect a reconciliation: he sets out with the plaintiff to the village of the defendant rather than summons the defendant to his *khoro*, or he goes as an intermediary (*mukhumadi*) of the one party to persuade the other to accept the settlement offered. Full-dress *khoro* trials are often like heated family consultations. *Khoro* cases in which the fine of restitution is a head of cattle must theoretically be reported to the capital, not for confirmation, but for directions as to the disposal of the fine; but in practice this rule is often not observed. 'Blood' cases not reported to the capital are dealt with by the district head, whose function is something between that of an intercessor and a judge. In theory 'blood' cases are not tried, and in practice district heads do inquire into and often finally settle such cases.

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627 691 the mother and the brother of Mabula went to the parents of Magasha, who, however, refused to allow the scraping of their daughter's teeth on the grounds that it implied that they were witches.

When the matter came before the *khoro*, the view was taken that, 'If a dog bites you and the wound festers, it is not wrong to ask the owner for a hair from its tail': you are not imputing witchcraft and it does not matter that the hair or scrapings may have no healing virtues, the important matter being willingness to help. Many side issues emerged, especially as to whose responsibility was the scraping of the teeth: the husband's or the parent's. Once Mukugoloi, Magasha's father, by escaping from his village, evaded the attempt made by Mabula's elder sister to scrape Magasha's teeth. There were at times recriminations in the *khoro*, which showed that the *mamyusalo* links were about to be broken. 'If you no longer care for us,' said Mukugoloi, 'I shall pay Mabula's parents'; but Khidai replied, 'What kind of ill-bred woman is that daughter of yours, who is pregnant by a lover, and swears at me by the things inside my trousers. My cattle have provided wives for two of your sons and only I of all your sons-in-law have "gates" in your village.' An old man interjected, 'The jealousies of the child are settled by its parents. Khidai is not responsible. You, Mukugoloi, must *khumelwa*.' A week later Mukugoloi offered a goat of reconciliation. But the *khoro* said, 'No. This goat is *duma mulodu*. We now want you to bring an ox, because the father of Mabula has come to you often to ask you to *khumelwa* and you refused.' And the father added, 'Yes, I came also to the *khoro* (a distance of eight miles) for eighteen weeks, but you did not turn up. Can I "work" eighteen weeks for merely a goat!'

Mukugoloi consented to pay, but urged that he had a case against Khidai, who should have prevented the drawn-out proceedings by settling it. That was another matter, said the court, for 'The kidneys of an elephant cannot be harnessed together' (they are, like two cases, too weighty to be dealt with at the same time). We may doubt whether it was wise, in view of the polygon of conflicts, to treat as *duma mulodu* the goat offered in reconciliation, but in these matters the *khoro* is generally wiser than we are.

692 *Hu khumelwa* and its elaborations lead us to consider the procedure in the *khoro*. The conceptions are interwoven, but a *khoro* trial is regarded as essentially different from the quasi-judicial procedures. It is public, unlike *hu khumelwa*, and it starts with *hu ɠalia* (a formal complaint to an officer of the court); there are 'opening' and 'closing' fees and compensation or restitution (*mulefo*); and the constitution of the *khoro* is not based on alinements of interested parties. Before *hu ɠalia*, there is no *khoro* case; the matter is private. *Hu vela*, privately to ask a debtor to pay, precedes but does not necessarily lead to *hu ɠalia*; it may end in *hu khumelwa*. But *khoro* trials and settlement in the family or by reconciliation out of court do not differ from one another as regards the sanction of force; both rely upon consent. Because the *khoro* is public, contempt of its authority may be punished, but the humiliation of the offender is a means rather of inducing him to consent than of enforcing a judgement; we have never seen it applied as an alternative to paying the

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fine or making the restitution. The great feature of the *khoro* is its publicity. It constitutes a large part of the public life of the men and, while it lives as an institution, it will powerfully counteract the sense of frustration resulting from the intervention of the white man.

The *khoro* is the final safeguard of the *munyunalo* system and, through that system, of the intricate social structure. It also deals with witchcraft, theft, assault, adultery, and other disputes; but its province in witchcraft and sorcery is limited and has only recently developed, theft and adultery do not lend themselves to its genius, and other cases are primarily to be settled by *ku khumelana*. Of all disputes coming before the *khoro*, 76 per cent. are *munyunalo* cases, but if we consider only the disputes that are really submitted to trial and not merely for confirmation or registration of a decision otherwise reached, the percentage rises to 88. Yet the chief subject of litigation is *munyunalo* only if we ignore completely the conflicts that are settled by *ku khumelana* or in the family. In our opinion, though by the nature of the case the evidence can never be complete, these latter cases outnumber *khoro* cases to the same extent as *munyunalo* cases outnumber all other cases of the *khoro*.

Of the many implications of these facts, we shall refer merely to two. First of all, contrary to what is often stated concerning the Bantu, it is not that most conflicts in the society arise from *munyunalo*, but that, of the disputes having, as we phrase it, legal consequences, none are more in evidence than *munyunalo* tangles. But as the *khoro* is really a *munyunalo* court, we cannot argue from the litigation we find in it to the general nature of the conflicts in the society. The error is somewhat like concluding from cases coming before special divorce courts among us, that marital disputes are the main causes of dissension in our society. *Khoro* proceedings are essentially *munyunalo* proceedings because the complex *munyunalo* system, and the safeguarding of its intricate reciprocities, can adequately be entrusted, not to private arrangements, but to an imposing public organization. The stresses and strains in the system are not only of a personal but of an institutional nature, involving the integration of diverse elements in the social structure. Compromises affect individuals as well as larger groups and their interrelations, and, for the solutions required, the society needs the wide perspective and wisdom of a trained body of men. They have to adjust personal difficulties, but in the context of an intricate system that is easily thrown out of gear. Herein also lies the special genius of the *khoro*.

Secondly, legal arrangements appear to be made and controlled by men, but that is because we identify law with the *khoro*, the place of the men. In *ku khumelana* women are at least as important as men, and in family disputes no one occupies so pivotal a position as the cattle-linked sister, the legal 'builder' of most houses in the country, she who 'cuts' cases arising within the house and regulates the inheritance of goods and of widows. These 'judicial'-like activities cover vast provinces of the total culture, and they are fully recognised in *khoro* proceedings in which neither in arriving at a decision nor in safeguarding its execution can the men ignore the wishes, authority, or influence of the sister. In complicated cases, they often postpone their decision again and again until she

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692 appeals, and they rely upon her to suggest a solution and to guarantee its
562 being put into effect. Old women, sitting on the fringes of the court, are sometimes heard to mumble, as if impersonally, about the tortuous ways of the men when such-and-such is the simple solution; a man within earshot overhears the remark and applies it to the case; and more often than not, as you see the men 'jump upon' the happy phrase or formula suggested, you realize that men do not have the monopoly of wisdom. Women are the strongest pillars of the social structure and without their support there can be no guarantee that the adjustments in the superstructure will be lasting or effective; and, in a society that relies on compromise and not on coercion, this role becomes even more important. Women appear as plaintiffs or defendants as frequently as men; we have never heard either the *khoro* or a party object that an opponent was a woman unassisted by her guardian; but we have heard an old woman, the defendant, refuse to proceed in a case where the plaintiff was a young man of twenty-five years. It was a divorce case, in which the young man presumptuously had handed *mayoolo* cattle, not to the mother of the bride, but to the bride's former husband. The mother took back her daughter and the young man sued for the return of his goods. The mother said in the *khoro*, 'I scorn to discuss the matter with you, a mere child. You know nothing about cases. Bring your father. I do not understand your complaint.' The *khoro* agreed. Of course, the *khoro* is the province of the men, and their place and functions in it have been institutionalized; by contrast, only a few women have an institutional hold upon the *khoro*, but they are firmly entrenched in the social structure, which is the *raison d'être* of the *khoro*.

694 We cannot do more than give a general picture of a few aspects of the practice and procedure of the *khoro*. There are the usual preliminary processes. A creditor, going alone directly to the debtor, complains (*ku vela*) once, twice, perhaps many times; the complaint is not made through the village head. The debtor may ask his district head or another to intercede as his *mukhomadi*. But if nothing happens, the creditor warns the debtor that he will proceed to *ku gelela*, the formal complaint to the district head, not the village head, which begins the case. The dispute may still be settled privately with the district head appearing in the role of an intercessor rather than a judge, probably at the defendant's village. If this fails, the assistance of the 'mother' of the district may be called in, as already described, or there may be a full-dress *khoro* trial, with its 'opening' fees and 'fees of the feet'. Should the district head be 'overcome', the case may go to the capital. The parties are summoned to appear on a certain Sunday and there are present some fifty men, all of them potential arbitrators. It is difficult to distinguish judges, litigants, and visitors, and, though there is some one presiding, now one, now another of the men, even though they have been found guilty in a previous case the same day, may take the lead and decide the case.

695 The *khoro* is not unlike a family council: there are no set forms or formulas or procedures, no precise order in which cases are called or matters are discussed. While the parties to one case, unable to reach agreement, retire to the 'dung of the dogs' along the fence of the court-

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confidence in the *khoro* and its methods, but some men increasingly resort to a mixture of the supernatural, the 'sending back' of the evil, and the processes of the European courts.

'Blood' cases and disobedience to tribal authorities, as well as witchcraft, are dealt with by procedures essentially different from those so far described. Homicide, especially accidental killing (*gwa*), is usually restituted by *ku khwarhwa* and by converting the criminal to a kinsman, without the intervention of the *khoro* or payment to the queen. But other procedures were also used: a murderer might be killed in the heat of the moment by a relative of the victim, and in such a case that ended the matter; or he might be executed by order of the queen unless he could escape to one of the recognized sanctuaries in the country; or he might be dealt with as a witch. Homicide in its manifold aspects is too large a subject for treatment here, but since it is, in regard to aspects of law dealt with in this book, adequately illuminated by our next subject, viz. procedure in 'blood' cases, we may content ourselves with the remark that homicide apparently did not involve a *khoro* trial.

'Blood' cases to-day present a curious mixture of different procedures of the past. One old element of the procedure, being incongruous with the disapproval of self-help, has completely disappeared. Old men told us that 'blood' cases were settled by the kin, not submitted to the *khoro*. That, but no doubt also the reluctance to appeal to the European, to-day explains the emphasis on reconciliation and the encouragement of *ku khwarhwa* in these cases. If a 'blood' case comes to the *khoro*, the victim gets nothing and the assailer pays heavily; if the matter is privately settled, the victim gets something and the assailer pays less. In the old days, if private settlement failed, the kin of the victim went to attack the assailer's village: they reported to the queen, but she exacted no fine if in the attack a man was killed. Though this method of execution is unknown to-day, it is still said that a man who kills an aggressor pays nothing, not even to the queen, for 'He who dies on the road is not to be cried for. Let the aggressor kill himself' (*mufo-dzilosi a u khwi, mulala a dzhaki*). This precept is also invoked to justify 'revenge' by means of medicines, but here, as in the case of aggression, it is regarded as self-defence, not self-help, just as killing an adulterer caught in the act—in which case also no blood-money is paid, even to the queen—is thought of as killing a thieving dog. These conceptions leave intact the aversion from vengeance: there is no blood revenge, no vendetta, no trace of the *lex talionis*, though a limb for a limb is known not very far off. Self-help, even in cases where it is admitted among tribes with more highly developed legal institutions, is frowned upon: one may neither kill a pig of another that damages one's crops nor drive cattle that have entered one's gardens into the fields of their owner. A man, provoked or assaulted by another, has no right to retaliate; and it is doubted whether the provocation will mitigate his offence, for no man may take the law in his own hands. Phoduli's relative had been killed by Magwale's sorcery, and in anger Phoduli struck Magwale's cow, which subsequently went lame; yet he was ordered by the *khoro* to pay the usual compensation.

How has the old procedure merged with the new conceptions? We

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can give only part of the answer. The exaggerated abhorrence of self-help and the insistence upon *ku khumelwa*, side by side with the tendency to regard blood as belonging to the queen (phrased as 'the head belongs to the chief'), has not driven the old procedures wholly out of the field. Old men say that 'blood' cases cannot be submitted to the *khoro*, yet they are second in number to *mayunulo* cases. In theory, the procedure is that the victim, having notified his district head, runs to show his blood at the capital, messengers (*maharula*) of the queen are sent, not to institute an inquiry or conduct a trial, but to collect one goat from every married man in the district of the victim; and each *leharula* takes two goats for himself and gives the rest to the queen. We have never seen this procedure applied in practice; the danger of European intervention makes it wholly impracticable. Instead, the wounded person reports immediately to the district head, sometimes to the queen, or if the wound is not serious the parties settle the matter by *ku khumelwa*. The district head often arbitrates successfully; but he can neither try nor fine nor exact court fees. If the victim goes to the queen, she sends a *leharula* (and often more than one) who exacts one goat (the 'fee of the feet') from the assaulter and one from the victim (the 'stick for roasting meat') and should he settle the matter informally, for he cannot conduct a full-dress trial, he receives one further beast (the fine) from the wrong-doer. The latter is given to the queen; the goat given by the victim is killed for the *leharula*, who takes a hind leg to the queen's *khoro*, where it is eaten chiefly by the councillors; and the victim gets nothing. But if the *leharula* fails in his mission, which in practice means that the assaulter refuses to submit to him or denies his guilt, he is summoned to the *khoro* at the capital. There is no 'opening' fee, for 'blood' opens the *khoro*; sometimes the parties are ordered to settle the matter between themselves and sometimes the offender is fined one head of cattle, which goes to the queen, and one goat, which is killed for the *khoro*. Sometimes, however, a victim reports to the queen merely to obtain a letter to the Native Commissioner.

These general principles are subject in individual cases to many variations which reflect the transitional nature of the procedure and the adjustments that are being made by the society. We have been able to observe the cases that came before the *khoro* far more closely than those settled privately. In one case where a father intervened in a fight between his son and his son's wife, the son in anger stabbed the father; the *khoro* ordered the parties to become reconciled by *ku khumelwa*, the son to beg pardon with a goat. In similar circumstances, where a stranger intervened, the husband was ordered to clear the grass in the queen's garage. In another case the husband wounded the mother of a youth whom he found with his wife, because the mother interfered in the ensuing quarrel between the husband and the youth; the *khoro* told the youth to beg pardon with three goats but fined the husband one head of cattle and one goat. While the *amidzajani* (whistling ancestors) were performing at a religious ceremony, one of them, very much intoxicated, blew his whistle in public and tried to drag one of the women away to the bush. A district head, an initiated man, forcibly ejected the offender, who next

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morning smashed him, but was worsted; the offender then reported him wounded at the capital. A *lekwadi* was sent to collect the blood fine from the district head, but, not finding him, left a message summoning him to the *khoro*. There the case was discussed with only initiates of the *gumaxwa* present. The men could not decide upon their course of action. They said, 'Let no one be angry. The district head did right, but we cannot carry out the law of the "school" (the man who reveals the *digwa* secrets must die). We cannot even impose a fine; no one knows what the fine should be. Let the matter rest.'

Khashani, working on a European farm, called his wife, whose baby was ill, to come to him. The baby died and Khashani, seeing 'medicine' on the fireplace, suspected and severely beat his sister's daughter as well as his sister. The case came to the *khoro* of the queen, which pointed out that if, as Khashani thought, his sister was a witch, he also probably was one. This did not satisfy Khashani, but his sister demanded back her cattle, and the *khoro*, attempting to isolate the struggle, said, 'We are discussing the "blood"'. You, Khashani, must pay your sister one head of cattle.' Khashani replied, 'That I agree to do. I shall even drive away my wife, so that I can return my sister's cattle.' The *khoro* was not much perturbed, since it thought that Khashani's threat was either bluff or the raving of a madman.

In the last case it was the victim, not the queen, who was awarded the head of cattle. The argument sometimes used by Lovedu men against such an award is better known in other tribes: it is that, if the victim is benefited, all he need do to become rich is to provoke others to fight him. And the theory held by those advancing this argument is that to spill blood is 'to break the queen's calabash', and therefore 'blood' cases must be submitted to the *khoro*. This is the view gaining ground, so that *makwadi*, going to collect the blood fine, become messengers summoning the parties to the queen's *khoro*, without, however, ignoring the position of the district heads. The whole procedure is in a state of flux, but we can see in outline how the blood feud has gradually receded as the kin groups become submerged by the district organization and how, as a consequence, the procedure of reconciliation gained so firm a hold that it maintains its stand against the forces making for centralization.

Not long ago the procedure appropriate to cases of witchcraft and sorcery was the ordeal (*muvu*); and though the *muvu* has given way in Vulovedu to smelling out by the diviner (*mugwa*), it can still be seen further east among the Phalaborwa. The test takes various forms; drinking poison, usually an extract of *nwanawa* (*Datura stramonium*), licking a medicated stick or a heated hoe, removing a stone from boiling water, floating the kernels of *mupani* (*Oncoba spinosa*) in water and observing whether they separate or come together, sometimes accompanied by an oath or followed by the washing of hands or the squirting of water (*ku phasa*). All these are well-known in the lowveld, though the Lovedu used only or chiefly the first; but on the highveld, where witchcraft and sorcery are treated as private matters, there is no legal but only a magical method of dealing with them: the evil is sent back by a doctor privately employed by the victim. The Lovedu no longer rely upon the *muvu*,

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powerful jurisdictions, the *khovi* and the *mugowe*. The *mugowe*, great though his powers be, holds a precarious position in the modern world. His fees are not fixed, but the usual amount is £1 10s. 6d., though it may be 5s. or more for each person of the party. Much of his technique is directed towards preventing the counsellors from giving him away to the European authorities. 'If you say I am a liar,' declared one *mugowe* to the parties, 'take back your money and go elsewhere. I even challenge you to take me to the Europeans; they will agree with me, as I have a licence to divine.' In another case a *mugowe* refused to find any one guilty. 'You force me,' he said, 'to smell out the witch, but you have left him at home. The other diviners who smelt out this man [the challenged person] are all wrong. And you [the challenger], if you wish to settle the dispute, must place a head of cattle as a sacred beast to wake up your grandfather.' But this finding did not persuade the parties to withdraw their case from the *khovi*, and the *khovi*, ignoring the finding, settled the matter in its own way. 695 791

Secondly, the wager is not made by way of an oath, but it is sometimes reduced to writing: 'They bet four head of cattle' (*va bejile khomu je mue*); that is all. The tiny slip of paper is kept by the 'ears'. The use of the term *ku beja* shows, as the people say, that the wager is a new conception. But we cannot be certain that the wager has been borrowed from Europeans. It fits the whole complex of judicial process: its essence is consent of the parties to be bound by their wager and by the findings of the *mugowe*. If one of the parties disagrees with these findings, he is entitled to demand back the money paid to the *mugowe* and ask the party to go further to another *mugowe*. The *khovi* may, however, vary the bet. The victor comes to the *khovi* and blows his horn; and the women ululate and dance (*ku pfeela*, which by extension also means to be acquitted or declared innocent by ordeal or *mugowe*). Meanwhile the vanquished party goes home and, if he is contrite, he says that he could not help doing wrong. Next day he might appear in the *khovi*, ask for time to pay or *khumelwa* or send an old man to plead for a reduction of the bet. The victor pretends to refuse, but in the end, if the *khovi* presses him, he will agree. Or the *khovi* may, on its own initiative, reduce the bet. Everything depends on the circumstances. Where the mother of a man was alleged to have killed the wife of his elder brother (the challenger), the *mugowe's* verdict was against the mother, but as he had said that she was not a born witch, but had only purchased the medicine from another, the *khovi* awarded the challenger two head of cattle instead of the six actually wagered. The bet is often not paid in full, while sometimes nothing at all is exacted as the 'cutter of the tongue' of the slanderer. But we have seen cases in which the *khovi* has, at the suggestion of one party, raised a wager from four to six head of cattle. 695 787

This is not the place to discuss the interrelations of the tribal and the European systems. For one thing, the subject requires a volume to itself. But it is necessary to insist that in criminal matters the system of Native courts is by European law essentially an integral part of the European structure. In 1934 Mujaji was given criminal jurisdiction in respect of offences punishable under Native law, but fines are limited to two head 692

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692 of cattle or £1; and so many offences, including grievous and indecent assaults, arson, and pretended witchcraft, are excluded that, when the queen received the letter granting jurisdiction, she exclaimed, 'Is there anything left to us?' In practice, as we have seen, a good deal is not so much left as quietly taken. Moreover, fines imposed can be enforced only by the process-in-aid also available in civil cases. Civil jurisdiction, as granted by the European, is more generous; it includes civil claims arising out of Native law brought before the chief by Natives against Natives resident within the area of jurisdiction. But, it need hardly be said, the alien conceptions of civil law and criminal law and their distinctions are only faintly understood. The chief has no power to proceed to execution against the wishes of the judgement debtor, for where the judgement debtor (or others at his instigation) resists execution, and seizure in the opinion of the messenger might lead to a breach of the peace, the messenger must report to the judgement creditor and it is he, not the chief, who if he so desires may apply to the Native Commissioner for process-in-aid. The *khoro* is not a court of record, but there are provisions as to appeal to the Native Commissioner, whose functions in hearing the case, as if it were a case of first instance, are not merely to determine the appeal, but also to act as a court of first instance for purposes of recording evidence.

This is a bare outline of the formal aspects of the situation. The sociological implications are fortunately infinitesimal compared with what they might have been if Native Commissioners had not been wiser than the law they administered. Their policy has been not to interfere. Moreover, the procedure of the *khoro*, by its insistence upon agreement and compromise, not only does not rely upon, but is inconsistent with, execution or the sanction of force. Compromise and physical coercion are contradictory principles which cannot co-exist. Litigants sometimes reluctantly resort to European courts and their processes-in-aid, not because European law has castrated the *khoro*, but because culture contact has cut some of the sinews of reciprocity.

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strengthens the tendency towards cunning and duplicity (which safe- 157
guard the secrecy of the rain charms) and has given rise to the impression
among Europeans that the Lovedu are cowardly and deceitful, lacking
the manly qualities of their neighbours, the Shangana-Tsonga. Foolish
valour is discredited, for 'It is at the home of the coward that the porridge
bowl is not thrown away': he lives to eat another day. The prestige of a 552
queen as ruler also maintains the high status of women in a patrilineal
society. Nowhere else are so many women heads of districts or in
such important political positions. Women own cattle, have wives and
may aspire to headship of large villages; and in the social system the
main forces are oriented from the pivotal position of the cattle-linked
sister. A wife or mother in queen of her establishment, as its old Khi-
lovedu name, *modjadji*, indicates: *ho loga* means to control like a leader,
while *ho loga* describes the expressive control of some overwatchful kraal
heads.

Agriculture is not important as a field of achievement, for crops 556
cannot be accumulated; immoderate success is suspect and a man cannot 585
establish or alter his status by economic means. 'Yours is what you eat,
what you set aside is another's', means both that expending energy upon
accumulating goods is lack of balance and that the 'haves' cannot be
ungenerous to the 'have-nots'. Nor is the royal complex of institutions,
except in so far as it interpenetrates the social system, a field of achieve-
ment for ordinary men. It is the social system which, besides being one
of the great pillars of security, provides the scheme in which man seeks
self-expression and recognition. There are wide avenues of achievement
for men, especially in the *khotla*, and women may aspire to influence
within the *munyanalo* complex and its 'houses'. There are other fields of
achievement: men may find satisfaction in the circle of the huts of their
wives, women in spirit possession, and both men and women may become
doctors, district heads, craftsmen, or story-tellers, while the adventurous
may seek expression in the fantasy of manipulating the forces of witch-
craft.

But all these avenues are available only within the arrangements of the 591
social structure, which on the whole are designed to eliminate competition 642
and to reward co-operation. The activities of the *khotla*, in which men
seek and display their highest self-expression, throw into bold relief the
qualities and traits that are most esteemed in the society: mature wisdom,
appeasement, reliance, not on force, but on agreement, and confidence
in the effective operation of the long-run reciprocities of the social system.
The task of the *khotla*, the most honourable and most arduous of all tasks,
is successfully achieved only if the disputants can be guided towards
reconciliation and acceptable compromises. Certainty—the idol of
security set up by our aggressive society, the fetish worshipped by legal-
istic practitioners and the obsession impelling our courts to adjudicate upon
conflicting rights according to strict law—is not a feature of the *khotla*.
The *khotla* is oblivious of the fear that hard cases will make bad law, for
it need not, as we do, steel itself against tenderness for the hardship of
the unwitting offender, lest exceptions upset the certainty of the law and
that elegant symmetry which, as we conceive, guarantees security. In

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[1] the Mavo the exigencies of personal adjustments may overrule the decrees
[2] of the law. In the setting of the Mavo we thus see emphasis upon compromise and informality, faith in muddling through rather than in meticulous certainty, and reliance upon the pressure of the social re-ciprocities, not upon the sanctions of force. We may, in the context of European society, call them care-free standards, but that is to fail to see their place among the Lovedu.

[3] These characterizations are faithful reflections of what one finds in the society and what is proper to the social structure as a whole. This structure provides the pattern of long-run reciprocities which, without the support of sanctions of force, ensures mutuality and co-operation. The reciprocities are motivated by inevitable necessity: 'The well-doer does well unto the well-doer; it is only his despoiler that the despoiler despoils'. Side by side with insistence upon give and take, the society provides in such a manner for the place and achievement of individuals that competitiveness is limited and aggressive traits are outlawed. The immediate goals of individuals are divergent, and men are not conceived as strenuously striving against one another for the attainment of the same end. Co-operation is essential to life and its tasks, for, says the proverb, 'One leg cannot dance a *gubo*'.

It is striking how the culture by re-interpretation prevents the struggle apparently inherent in the objective situation, such as when there are limited prizes or resources. The Reserve is overcrowded, the population presses hard upon the natural resources, and land is scarce; yet the people act as if the old abundance of land still prevails. They attribute ordinary shortages, not to scarcity of land, but to the indolence of the modern generation, thus rephrasing their difficulties in a manner which is congruous with social values, reduces the possibility of competition and permits of the resolution of the difficulties by human effort. And, generally speaking, economic resources and especially the *mavyaalo* cattle exchanges cannot be manipulated to acquire wealth or status or position. There is no special prestige attached to possessions and no socio-economic stratification of classes; for a great man, whether he be poor or rich, is first and foremost a royal relative, and the purpose of economic activities is self-sufficiency and independence. What particularly struck us was the absence of competition in craftsmanship: we have often seen one potter appraising the pots of another; we have always found it useless to urge expedition upon one worker by hinting that otherwise we would place our order with another; and it seemed to make little difference that the money was badly needed for tax purposes. Lucrative trade, calculation instead of mutuality in the work party, and display, both of possessions and of personality, are intensely disliked.

To the same pattern of values as non-competitiveness belong the disinclination to make comparisons and the aspiration towards equality with others. The role of these attitudes is not merely economic. The former reflects lack of interest in analysis as well as the absence of graduated yardsticks for comparing quantities and performances. Linguistic devices for expressing comparison—adjectives have no comparative or superlative forms—can hardly cope with our distinctions. It

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integration that has taken place has been a response of the culture itself to the challenges of the new order. Therein lies the greatest difference from the manner in which Christianity has influenced the culture. Since 1938 the policy has changed somewhat, and there are more active though still not conscious interferences with custom; but among the Lovedu the effect as yet has been negligible. 177

The labour migration to towns and farms, necessitated by taxation, is reluctantly undertaken. The Lovedu are not easy prey to recruiters, who have to give assurances regarding, not only labour and other conditions, but also immunity from arrest for arrears of tax. The ideal is to return home, for 'The only place one never returns to is the womb'. The migration has not had the great effect that is reported in other parts of Africa: very little that is brought back is incorporated into the culture, even the accent men acquire in towns being rapidly discarded: marriage ceremonial does not require the presence of the man, his bridal visits being often undertaken by others; the pivotal position of women in the social structure minimises disturbances; and, since during the whole suckling period a husband should partially avoid his wife, his absence for six months or so in town is not a serious problem as far as sexual adjustments are concerned. The absence of the men creates difficulties in holding the initiations and in economic dispositions. But the salient fact is that the energies liberated by the use of the plough exceed the strain caused by the labour migration. Old men, who no longer pay taxes, conduct the political and legal affairs of the tribe, and women, who do not migrate, control religion and ritual.

In legal arrangements there have been changes. But the deprivation of the power to enforce decisions means little to the old culture, which never relied upon force, though it may mean something when the sanction of reciprocity has become undermined. The force of the law is being destroyed, not by the limited jurisdiction allowed, but by the interference of solicitors and the multiplication, so it is believed, of criminals acquitted or protected by the European. Witches, they say, escape punishment by Europeans, because Europeans neither have witchcraft nor understand its workings. We have elsewhere noted some readjustments in legal procedure. Here we need add only a few further points. The *khosi* must be careful lest dissatisfied litigants report procedures or decisions that are illegal by European standards; but, on the other hand, it sometimes threatens recalcitrant debtors with the dire consequences of being sent to the European, and such is the disinclination to be judged by the European that the threat is generally effective. The *khosi*, for instance, takes care not to order an expulsion (which is illegal) before the crops are reaped, so the victim is then more liable to appeal, while many cases may be quoted in which the threat to send a litigant to the Native Commissioner has led to a solution by agreement. The weakening of the sanctions of reciprocity has led to increasing resort, not to the European courts, but to 'sending back' the evil. 177 692

The *khosi* has more and more to deal with written evidence, such as cattle lists, letters between the parties and from farmers, and pieces of paper on which had been noted the marriage cattle that have passed. 177 695

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given to the son of deceased's youngest wife who had deserted him; two goats were killed for the widow of the deceased's eldest son by his first wife when she came from Johannesburg to pay a visit of condolence. Deceased's field was a *lushupe*, a site of their previous village, and as is the custom with such a field, was divided between his wives. His mealies were equally divided between all his wives, his own daughters who were present at the ceremony also receiving some. In the case of Mathekha, all his cattle were given by the *khadi* (his sister) to his eldest son by his chief wife, a man who was a prominent councillor of the queen. It was understood they would be used for helping his brothers and half-brothers to marry. The old man's blankets and money were divided among all his children, the elder ones receiving £1 10s. 0d., the smaller ones only 10s.

The wives of a deceased man if they are still of childbearing age are allocated to his brothers or, in the case of a very young wife, sometimes to the chief son and heir. It is his responsibility to hold the family together after the death of his father. The division of the property is made on the day of purification from mourning (*khitshila*) about a year after the death when all the relatives have gathered together. The person responsible for the division of the inheritance in property and wives is the eldest uterine sister of the deceased who acts in consultation with her sisters, especially the cattle-linked sister of the deceased. If there is no uterine sister the deceased's eldest daughter takes her place. She will act in consultation with her father's brother if one is still alive. In allocating wives some consideration is generally given to the wishes of the parties concerned.

When the heir is a minor, a brother of the deceased, usually the one who inherits the mother of the heir, may be chosen to act as regent. But he must be careful to act only in consultation with the *khadi*. In many instances in the case of the death of a district head when the *khadi* (sister of deceased) is old or a widow and free to leave her husband's homestead she may herself come to rule in her brother's village. When M. died, the son of his chief wife was still a child so his uterine sister, a widow, came to rule, while the younger half-brother of the deceased returned from another area where he had been living to set up his village near by in order to raise seed to his half-brother by the chief wife and help his half-sister by conducting

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the court cases. Later, when the heir came of age, a new homestead was built. When Mabulana died in the 1940's his daughter, a married woman who does not live in the area was made official district head. Her mother's brother came specially from the Capital to live in the area and help her by conducting cases.

The mother's brother is considered to be eminently suitable as adviser to a ruler. The queen, too, traditionally has a mother's brother as chief councillor. A mother's brother has no claim to succession yet is deeply interested in the welfare of his sister's child. He will see to it that the sister's child gets his rights. The position of the son of the *khadi* who is acting as regent is somewhat different. There is a Lobedu proverb saying '*Bya thaga masye ke dula mudzhulu*—where a master is lacking there sits the nephew'. And it is true that the son of a woman regent is often ruler in all but name. In the 1930's there were two blatant cases in which the rightful heirs of district heads who had long reached man's estate seemed in danger of permanently being ousted. In both cases in the long run when the *khadi* died the rightful heir was installed, in one of the cases on the expressed dying wish of the *khadi*. Right seems to prevail in the long run.

The Homestead Through Time

Basically a homestead consists of a group of 'houses' belonging to the wives of the head or of the head and his half-brothers. Other relatives may attach themselves to it but the core remains the group of agnates.

Many of the smaller homesteads that have all the appearance of being independent are found upon investigation to be portions (a 'house') of a neighbouring homestead, which has become separated in space but still considers itself part and acknowledges the authority and control of the senior homestead near by. The most obvious case of this arises where, owing to quarrels between co-wives, a husband has placed one of the wives in a homestead of her own and visits her there. If a wife has a married son then in the event of serious quarrels there is more likely to be a hiving off, the son moving to a different area with his mother and siblings.

In Figure 5 a very small homestead is shown. Here the